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AN ACT

RELATING TO OCCUPATIONAL HEALTH AND SAFETY; ADJUSTING THE
PENALTIES FOR VIOLATIONS OF THE OCCUPATIONAL HEALTH AND
SAFETY ACT TO CONFORM WITH FEDERAL LAW; REQUIRING THE
DEPARTMENT OF ENVIRONMENT TO ADJUST PENALTIES ON AN ANNUAL
BASIS TO ACCOUNT FOR INFLATION; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 50-9-24 NMSA 1978 (being Laws 1975,
Chapter 290, Section 14, as amended) is amended to read:

"50-9-24. PENALTIES.--

A. Any employer who willfully or repeatedly
violates any provision of the Occupational Health and Safety
Act or any regulation or order promulgated pursuant to that
act may be assessed a civil penalty not to exceed one hundred
twenty-six thousand seven hundred forty-nine dollars
(\$126,749) for each violation; provided that a civil penalty
shall not be less than nine thousand fifty-four dollars
(\$9,054) for each willful violation.

B. Any employer who has received a citation for a
serious violation of any provision of the Occupational Health
and Safety Act or any regulation or order promulgated
pursuant to that act shall be assessed a civil penalty not to
exceed twelve thousand six hundred seventy-five dollars
(\$12,675) for each violation.

1 C. Any employer who has received a citation for a
2 violation of any provision of the Occupational Health and
3 Safety Act or any regulation or order promulgated pursuant to
4 that act that is determined not to be of a serious nature may
5 be assessed a civil penalty of up to twelve thousand six
6 hundred seventy-five dollars (\$12,675) for each violation.

7 D. Any employer who fails to correct a violation
8 for which a citation has been issued within the period
9 permitted for its correction, which period shall not begin to
10 run until the date of the final order of the commission in
11 the case of any review proceeding provided for in Section
12 50-9-17 NMSA 1978 initiated by the employer in good faith and
13 not solely for delay or avoidance of penalties, may be
14 assessed a civil penalty not to exceed twelve thousand six
15 hundred seventy-five dollars (\$12,675) for each day during
16 which the failure or violation continues.

17 E. Any civil penalty assessed against the state,
18 a political subdivision of the state or any agency of either
19 pursuant to Subsection B, C or G of this section shall not be
20 collected during the time permitted for correction of the
21 violation, and if the violation is corrected within such
22 time, the civil penalty shall be deemed paid without further
23 action of the state, political subdivision or agency.

24 F. For purposes of this section, a serious
25 violation shall be deemed to exist in a place of employment

1 if there is a substantial probability that death or serious
2 physical harm could result from a condition that exists or
3 from one or more practices, means, methods, operations or
4 processes that have been adopted or are in use in the place
5 of employment unless the employer did not and could not with
6 the exercise of reasonable diligence know of the presence of
7 the violation.

8 G. Any employer who violates any of the posting
9 requirements as prescribed by the Occupational Health and
10 Safety Act shall be assessed a civil penalty not to exceed
11 twelve thousand six hundred seventy-five dollars (\$12,675)
12 for each violation.

13 H. The commission has authority to assess all
14 civil penalties provided in this section, giving due
15 consideration to the appropriateness of the penalty with
16 respect to the size of the business of the employer being
17 charged, the gravity of the violation, the good faith of the
18 employer and the history of previous violations.

19 I. Civil penalties imposed pursuant to the
20 provisions of this section shall be paid into the general
21 fund.

22 J. No later than April 1 of each year, the
23 secretary shall adjust as necessary the minimum and maximum
24 penalty amounts established in Subsections A through D and G
25 of this section to account for inflation. The amounts shall

1 be increased by the percentage of the preceding calendar
2 year's increase of the consumer price index for all urban
3 consumers, United States city average for all items,
4 published by the United States department of labor. The
5 amount of the increase, if any, shall be rounded to the
6 nearest dollar, but shall not exceed one hundred fifty
7 percent of the current penalty amount. The secretary may
8 issue rules to carry out the provisions of this subsection
9 that conform with the federal Occupational Safety and Health
10 Act of 1970.

11 K. Any employer who willfully violates any
12 provision of the Occupational Health and Safety Act or any
13 regulation or order promulgated pursuant to that act causing
14 death to any employee by that violation shall, upon
15 conviction, be punished by a fine of not more than ten
16 thousand dollars (\$10,000) or by imprisonment for not more
17 than six months or by both; except that if the conviction is
18 for a violation committed after a first conviction of the
19 person, punishment shall be by a fine of not more than twenty
20 thousand dollars (\$20,000) or by imprisonment for less than
21 one year or by both.

22 L. Any person who gives advance notice of any
23 inspection to be conducted under the Occupational Health and
24 Safety Act without authority of the secretary shall, upon
25 conviction, be punished by a fine of not more than one

1 thousand dollars (\$1,000) or by imprisonment for not more
2 than six months or by both.

3 M. Whoever knowingly makes any false statement,
4 representation or certification in any application, record,
5 report, plan or other document filed or required to be
6 maintained pursuant to the Occupational Health and Safety Act
7 shall, upon conviction, be punished by a fine of not more
8 than ten thousand dollars (\$10,000) for each such violation
9 or by imprisonment for not more than six months or by both.

10 N. A person who reveals a trade secret in
11 violation of Section 50-9-21 NMSA 1978 violates this
12 subsection and shall, upon conviction, be punished by a fine
13 of not more than ten thousand dollars (\$10,000) or by
14 imprisonment for less than one year or both."

15 SECTION 2. EMERGENCY.--It is necessary for the public
16 peace, health and safety that this act take effect
17 immediately.

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